

EXHIBIT 9
DATE 01/14/2013
HB 30



Protecting the Election Franchise for Montana's Native American Population

Vote against HB 30

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or more information:

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Protecting the Election Franchise for Montana's Native American Populations

The Western Native Vote (WNV) is a non-partisan effort to mobilize the American Indian vote in collaboration with Tribal governments, urban Indian Centers, among other partners. In 2012, Western Native Voice spearhead a groundbreaking campaign to register and turn out a record number of American Indian voters in Montana. WNV is about training and creating an election infrastructure within Native communities, both on reservations and in Montana's largest Native urban populations to ensure the Native voice is heard.

Trends in Indian Voting

Indians were first granted the right to vote in 1924. Since first being granted citizenship 88 years ago, Native Americans have become increasingly active in the electoral process. Several major recent elections have been heavily influenced by Native American issues and Native voting patterns. In 2000, the Indian vote was credited with defeating Senator Slade Gorton in Washington State. In 2002, the Indian vote helped retain a Senate seat for Senator Johnson in South Dakota, who won by just over 500 votes. The Native American vote has also been credited with Senator Tester's win in Montana 2010. In 2012, in North Dakota Senator Heidi Heitkamp race, the Native American vote was critical once again in electing another official. Also in 2012, Montana Native Americans registered a record 6,300 new voters and had a 61% turnout in Native American precincts. Native American voters tend to be loyal to candidates who champion their issues.

However, it has been a long and difficult road to this increased political participation. Native Americans were denied the right to vote longer than any other community in the United States, and they continue to struggle against ongoing disenfranchisement and voter suppression actions.

Historical Obstacles to Indian Voting

Eighty eight years ago, with the passage of the *Indian Citizenship Act of 1924*¹, Native Americans were first granted U.S. citizenship and the corollary right to vote – 54 years after African American men were formally enfranchised with the 15th Amendment (1870), and four years after women received the right with the 19th Amendment (1920).²

However, voting procedures are delegated to the states, and well past 1924 some states used this power to continue to deny Native Americans the right to vote. For example, as late as 1962, New Mexico still overtly prohibited Native Americans from voting. When, with the passage of the Voting Rights Act in 1965, states used English literacy tests to prevent Native American from registering to vote.³

Legal obstacles

Historically, there were four arguments used by states to justify their continued disenfranchisement of Native voters:

¹ *Snyder Act*, June 2, 1924.

² Up until then, Indian citizenship was granted only when and Indian was "competent and capable of managing his or her own affairs." (*Burke Act*, 1906)

³ In *Oregon v. Mitchell*, 400 U.S. 112 (1970), the Supreme Court upheld the Voting Rights Act ban on literacy tests and noted that many states including Montana had "a serious problem of deficient voter registration among Indians."

1. Indians were under federal guardianship, or were federal "wards", and therefore not independent and competent for voting;⁴
2. Indians living on reservation lands were residents of their reservation and not of the state (even though the Supreme Court declared all reservation Indians residents of their states in 1881);⁵
3. Indians did not pay state taxes and, therefore, should not be able to affect revenue decisions;⁶ and
4. Indians were not "civilized," and their continued participation in their Tribal communities precluded participation in other elections.

Montana also disfranchised Indians after the Citizenship Act by amending its constitution in 1932 to require that a person, in order to vote, not only be a "citizen" but also a taxpayer—unless, that is, a person had the right to vote at the time the state constitution was first adopted.⁷ The state enacted a statute in 1937 requiring all deputy voter registrars to be "qualified, taxpaying" residents of their precincts.⁸ Since Indians living on reservations were exempt from some local taxes, the requirement excluded almost all Indians from serving as deputy registrars and denied them access to voter registration in their own precincts. This provision remained in effect until its repeal in 1975.⁹ Another statute enacted in 1937 cancelled the registration of all electors and required re-registration.¹⁰ Indian voter registration remained depressed after the purge until the 1980s. In Colorado, Indians residing on reservations were not allowed to vote until 1970.¹¹

Current Obstacles

It was this last legal prohibition, the requirement that Native Americans be "civilized" before being granted the right to vote, the compounded the already complex and difficult issue of citizenship and civil participation for Natives. Many Indians had no interest in U.S. citizenship and even rejected it. Some believed that accepting citizenship with the very government that had oppressed one's community seemed tantamount to treason, or, at best, foolishness.

Problems with "Registering" with the Government. Past governmental efforts at registering or identifying community members had been for the purpose of taking land, relocating a community, or forcefully removing children to boarding schools. These experiences, ingrained in the collective memory of Native communities, are apparent in the ongoing resistance to "register" for a government ID, to "register" to vote, or, to "register" for any purpose with any state or federal governmental entity.

⁴ In Arizona, the state Supreme Court disqualified Indians from voting because they were under "federal guardianship," a status construed by the court to be synonymous with "person under disability." A decision enforced until the court reversed itself in 1948. *Harrison v. Laveen*, 67 Ariz. 337, 196 P.2d 456 (Ariz. 1948).

⁵ Utah disenfranchised Indian voters by claiming that Indians residing on reservations did not qualify as residents of the state, despite the 1881 Supreme Court decision to the contrary. This statute stood until 1957 when, under threat of reversal by Supreme Court, the state legislature abolished it.

⁶ Idaho, Maine, Mississippi, New Mexico, and Washington prohibited "Indians not taxed" from voting as late as 1968, even though they granted the franchise to whites who were not taxed. IDAHO CONST. art. VI, S 3 (1890, amended 1950); N.M. CONST. art. XII, S 1; WASH CONST. art. VI, S 1; MISS CONST. art. 12 S241 (1890, amended 1968).

⁷ Article IX, Section 2, Constitution of Montana (1932).

⁸ Mont. L. 1937, p. 527.

⁹ Mont. L. 1975, ch. 205.

¹⁰ Mont. L. 1937, p. 523.

¹¹ *Cuthair v. Montezuma-Cortez*, Colo. School Dist.

Requirement of Being "Civilized" To Vote. These concerns were only exacerbated by the requirement of many states, including Idaho¹², Minnesota¹³, North Dakota¹⁴, and South Dakota¹⁵, that Indians had to relinquish their Tribal allegiances and become "civilized," according to the majority community's standards, before they were able to vote.¹⁶ The Negative association between betrayal of their own community and voting has had long-lasting effects on current attitudes toward voting in the Native community.

Current Obstacles to Indian Voting

Even with all the success resulting from recent legislative protections and litigation, a number of legal and cultural obstacles continue to hinder full enfranchisement of America's Native community. For example:

Vote Dilution. Electoral systems continue to be designed in manners that result in diluting the strength of the Native voice. At-large and multi-member voting districts, and discriminatory reapportionment plans can all have a negative effect on the ability of Native communities to have their electoral voice heard. For example, Buffalo County South Dakota went out of its way to draw its water district lines in a way that grouped nearly 90% of the Native population into one of the three voting districts.¹⁷

On November 16, 1999, the United States filed a lawsuit against Blaine County, Montana challenging their at-large method for electing the county's Commissions. Negotiations to resolve the case were unsuccessful, and the struggle continued to block efforts to dilute Native voting strength. In April of 2004, the United States Court of Appeals for the Ninth Circuit ruled on a case involving Blaine County, Montana. The United States brought a Section 2 action against Blaine County alleging that the county's at large voting system prevented Indians from participating equally in the country's political process. The district court determined that Section 2 was a constitutional exercise of Congress's powers under the Fourteenth and Fifteenth Amendments, and that Blaine County's at large voting system violated Section 2. On Appeal, Blaine County lost - the Ninth Circuit affirmed the district court's decision.¹⁸

In 2000, Native Americans represented by the ACLU, sued Rosebud County and Ronan School District 30 in Lake County for their use of at-large elections. Rather than face prolonged litigation, the two

¹² IDAHO CONST. art. VI S 3 (1890, repealed 1950)

¹³ The Minnesota Supreme Court defined its constitutional provision of "civilized" Indians as those who had taken up their "abode outside the reservations and there pursuing the customs and habits of civilization." MINN. CONST. art. VII, S 1, cl. 4 (1857, repealed 1960)); *In re Liquor Election in Beltrami County*, 138, Minn. 42, 163 N.W. 988 (1917).

¹⁴ North Dakota's constitution contained a provision that extended the vote only to "civilized persons of Indian descent who shall have severed their Tribal relations." N.D. CONST. art. V, S 121, (1889, repealed 1922)

¹⁵ South Dakota prohibited Indians from voting or holding office "while maintaining Tribal relations." S.D. Codified Laws Ann. S 92 (1929, repealed 1951). Indians from Todd and Shannon Counties were still prevented from holding office until 1980 as a result of litigation brought on their behalf. *United States v. South Dakota* 636 F.2d 241, 243 (8th Cir. 1980).

¹⁶ Suzanne E. Evans (University of California at Berkeley), *Encyclopedia of North American Indians, Voting* (Houghton Mifflin)

¹⁷ *Kirkie v. Buffalo County*, CIV No. 03-3011 (D.S. D Feb. 12, 2004).

¹⁸ Danna R. Jackson, *Eighty Years of Indian Voting: a Call to Protect Indian Voting Rights*, 65 Montana Law Review 269-288, 270-271, 281-288 (Summer 2004)

jurisdictions entered into settlement agreements adopting district elections.¹⁹ The difficulty Indians have experienced in getting elected to office was particularly evident in Ronan School District 30. From 1972 to 1999, seventeen Indians had run for the school board, and only one, Ronald Bick, had been elected. With no formal or announced tribal affiliation at the time, Bick was elected to the board in 1990. But he was defeated for reelection in 1993, after it became known he had joined the Flathead Nation. The settlement plan agreed to by the parties called for an increase in the school board size from five to seven members and the creation of a majority-Indian district that would elect two members to the board. In the election held under the new plan, two Indians were elected from the majority-Indian district.

Voter Suppression Tactics. Unfortunately, as the Native voting population turns out in larger numbers, attention to their voting influence has also attracted efforts to discourage them on Election Day. One of the most common tactics employed in recent elections has been to the challenging of Natives' voting status in Indian reservations by non-Native partisan poll watchers on Election Day. In 2008 in four Montana counties where Native Americans make up the majority of the population, the Republican Party challenged all new voter registrations one month before the general election.

Linguistic Barriers, Section 203 of the Voting Rights Act provides for language protections for many Native Communities, here in Montana, for residents in Big Horn and Rosebud counties. However, many States continue to be non-compliant. The State of Alaska, for example, has never been in compliance, despite the fact that their Native communities have one of the largest percentages of individuals who only speak their Native language. The Native communities in Alaska have been in on-going litigation with the State.

Table 1: American Indian Languages: Currently there are 80 local jurisdictions across 17 states required to provide minority language assistance in voting pursuant to Section 203 because of their American Indian populations. State Jurisdiction Covered by Sec. 203.

State	Census Area or Borough/County/Parish
Alaska	Bethel, Dillingham, Kenai, North Slope, Wade, Hampton, Yukon Koyuk
Arizona	Apache, Coconino, Gila, Graham, Maricopa, Navajo, Pima, Pinal, Yuma
California	Imperial and Riverside
Colorado	La Plata, Montezuma
Florida	Broward, Collier, Glades
Idaho	Bannock, Bingham, Caribou, Owyhee, Power
Louisiana	Allen
Mississippi	Attala, Jackson, Jones, Kemper, Leake, Neshoba, Newton, Scott, Winston
Montana	Big Horn and Rosebud
Nebraska	Sheridan
Nevada	Elko, Humbolt, Lyon, Nye, White Pine
New Mexico	Bernallilo, Catron, Cibola, McKinley, Rio Arriba, San Juan, Sandoval, Sante Fe, Sororro, Taos, Valencia

¹⁹ Alden v. Rosebud County Board of Commissioner, Civ. No. 99-148-BLG (D. Mont. May 10, 2000); Matt v. Ronan School District, Civ. No. 99-94 (D. Mont. Jan. 13, 2000).

North Dakota	Richland and Sargent
Oregon	Malheur
South Dakota	Bennett, Codington, Day, Dewey, Grant, Gregory, Haakon, Jackson, Lyman, Marshall, Meade, Mellette, Roberts, Shannon, Stanley, Todd, Tripp, Ziebach
Texas	El Paso and Maverick
Utah	San Juan

Distant Poll Locations. Much of Indian Country is in very rural and remote locations. Limited state resources often place polling precincts over 60 miles from voters. With no public transportation on most reservations, limited resources for gas money, and often inhospitable weather in November, distant polls often mean disenfranchisement for Native Americans.²⁰

Transitory Restrictions. The current electoral system is antiquated and designed for western populations that live in one location for long periods of time. Many of our reservations are large and encompass many different counties. A Native family will live within its Nation's boundaries but may go back and forth between families and homes depending upon the time of year. One of the largest forms of disenfranchisement in Indian Country is the requirement of voting in a particular precinct. The access to ballots should be modernized, or at the minimum "up ballot" voting should be required.

Lack of Enforcement of the Voting Rights Act. Despite the application of the Voting Rights Act to American Indians, relatively little litigation to enforce the act—or the constitution—was brought on behalf of Indian voters in the West until fairly recently. At-large elections are one way that jurisdictions dilute minority voting strength, but from 1974 to 1990, for example, plaintiffs brought only one lawsuit in Montana challenging the method, despite its widespread use.²¹ In Georgia, by contrast, during the same period, African Americans brought lawsuits against 97 counties and cities.²² The extensive voting rights litigation campaign being waged elsewhere largely bypassed Indian country. A lack of resources and access to legal assistance by the Indian community, lax enforcement by the Department of Justice, the isolation of the Indian community, and the debilitating legacy of years of discrimination by the federal and state governments contributed to the lack of enforcement of the Voting Rights Act. But where litigation has occurred, courts have invariably found patterns of widespread discrimination against Indians in the political process.

Unfounded Allegations of Fraud. An excerpt from *Voting Rights in Indian Country: A Special Report of the Voting Rights Project of the American Civil Liberties Union, September 2009*, states:

"The Citizens Equal Rights Alliance (CERA) is an organization whose web site notes: "Federal Indian Policy is unaccountable, destructive, racist and unconstitutional. It is therefore CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States of America."²³ It filed a case, *CERA v. Johnson*, contending that

²⁰ Polling places on reservations have been moved or closed to reduce Native voter turnout. See *Goodluck v Apache County*, 417 F. Supp. 13, 14 (D Ariz. 1975), *aff'd* 429, U.S. 876 (1976).

²¹ *Windy Boy v. County of Big Horn*

²² Laughlin McDonald, Michael B. Binford, and Ken Johnson, "Georgia," in *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990*, eds. Chandler Davidson & Bernard Grofman (Princeton; Princeton U. Press, 1994), 81.

²³ <http://www.citizensalliance.org/>.

widespread "election fraud and/or voting rights abuses" took place on the Crow Indian Reservation in Big Horn County, Montana, during the November 2006 election.²⁴ One of the alleged examples of "fraud" was the endorsement by the Crow Tribal Legislature of Crow Tribal members running for Big Horn County offices, endorsements no different from those by plaintiffs CERA or MCRA (Montana Citizens Rights Alliance), or the Republican or Democratic parties. In fact, the right of an organization or group to endorse candidates for public office is protected by the First and Fourteenth Amendment of the Constitution. The ACLU Voting Rights Project represented Tracie Small, Ada White, Sidney W. Fitzpatrick, Jr., Kennard Real Bird, and Elvira "Nellie" Little Light—all Indians and residents and voters of Big Horn County who sought to intervene in the lawsuit to defend Crow Reservation elections.

One of the "remedies" CERA sought was that "polling places for federal, state, county, and local district elections cannot be located within [the exterior boundaries of any particular Indian reservation]." If such a measure were granted, would effectively disfranchise many, if not most, Indian voters. CERA further contended that the voting strength of white voters was diluted because ballot boxes at two precincts on the Crow Indian Reservation were unsecured on Election Day, because a poll watcher was improperly ordered to leave after the polls were closed but before the ballots were counted, and because one tribal member admitted that she voted twice. Whether or not any of these allegations were true, CERA offered no evidence that the election outcome was affected or that votes were diluted in any way. Plaintiffs did not allege any concrete and particularized injury that would afford them standing to raise such claims in a federal lawsuit. If there was voter fraud, it should be prosecuted under state law. But the complaint in *CERA v. Johnson* did not indicate that the defendants committed voter fraud or that the plaintiffs were entitled to any relief. Notably, whites have accused Crow Tribal members of voter fraud in the past. A federal court, however, held the charges were "unfounded" and concluded there was "a strong desire on the part of some white citizens to keep Indians out of Big Horn County government."²⁵ The suit by CERA was dismissed by the court on November 5, 2007, for failure to state a claim. The plaintiffs did not appeal."²⁶

²⁴ Case No. 1-07-CV-00074-REC (D.Mont.).

²⁵ *Windy Boy v. County of Big Horn*, 647 F.Supp. at 10133, 1022.

²⁶ *Voting Rights in Indian Country: A Special Report of the Voting Rights Project of the American Civil Liberties Union*, September 2009



Election Day Late Registrations, 2006-Present

Montana Secretary of State Linda McCulloch

Elections and Government Services Division

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County	Election Day Late Registrations on General Election Day November 6, 2012	Election Day Late Registrations on Primary Election Day	Election Day Late Registrations on General Election Day Tuesday, November 2, 2010	Election Day Late Registrations on Primary Election Day Tuesday, June 8, 2010	Election Day Late Registrations on General Election Day Tuesday, November 4, 2008	Election Day Late Registrations on Primary Election Day Tuesday, June 3, 2008	Election Day Late Registrations on General Election Day Tuesday, November 7, 2006
TOTALS	8053	1178	3735	836	7547	2679	4301
Big Horn	113	26	51	48	156	92	143
Blaine	62	6	11	3	49	13	26
Chouteau	35	9	19	8	20	12	13
Glacier	119	17	12	16	44	17	75
Hill	196	14	53	9	157	33	100
Lake	283	62	83	25	267	94	79
Pondera	41	15	22	9	29	9	14
Roosevelt	100	9	52	14	63	19	88
Rosebud	65	5	30	9	78	15	50
Sanders	61	10	19	23	77	13	32
Valley	85	3	57	3	53	12	26
total NA Counties	1160	176	409	167	993	329	646
% of NA	14.4%	14.9%	11.0%	20.0%	13.2%	12.3%	15.0%